

COUNCIL CHAMBERS -- CITY COUNCIL  
CITY HALL -- CITY OF LODI

Monday, January 31, 1958

On call of the Mayor, the City Council of the City of Lodi met in special session at 7:00 o'clock P.M. of Monday, January 31, 1958, Councilmen Clark, Graffigna, Spooner, Weihe and Steele present, none absent. All members of the Council signed Waiver of Notice and Consent to Special Meeting and the Mayor announced that the purpose of the meeting was the consideration of the filing of a stipulation to be entered by attorneys for the City in the case now pending in the Superior Court, City of Lodi, Plaintiff vs. East Bay Municipal Utility District, Defendant.

Resolution No. 945 as prepared and submitted by Attorneys Glenn West and Robert M. Searls was introduced on motion of Councilman Weihe, seconded by Councilman Graffigna, read by the Clerk and fully considered and discussed by the Council, its attorney and the City Engineer.

RESOLUTION NO. 945

BE IT RESOLVED, By the City Council of the City of Lodi, County of San Joaquin, State of California, that, whereas there is now pending in the Superior Court of the State of California, in and for the County of San Joaquin, a certain action numbered 22,415 and entitled "City of Lodi, a Municipal Corporation, Plaintiff, vs. East Bay Municipal Utility District, a public corporation, et al, Defendants; now therefore, Robert M. Searls and Glenn West, as attorneys for said City of Lodi, be and they, as such attorneys, and for and on behalf of said city, are hereby authorized and directed to sign, execute, deliver and file with said court in said action, a stipulation in the words and figures following, to-wit:

"IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN JOAQUIN.

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CITY OF LODI,	)	
a municipal corporation,	)	
	)	
Plaintiff,	)	No. 22,415
vs.	)	
	)	<u>STIPULATION.</u>
EAST BAY MUNICIPAL UTILITY DISTRICT,	)	
a public corporation, et al,	)	
	)	
Defendants.	)	

"IT IS HEREBY STIPULATED AND AGREED by and between CITY OF LODI (herein referred to as "Plaintiff") and EAST BAY MUNICIPAL UTILITY DISTRICT (herein referred to as "Defendant") that, subject to the provisions hereinafter contained, the static ground water level to which the wells of plaintiff may be lowered without substantial danger to plaintiff's water supply, allowing an adequate safety factor in favor of plaintiff, is mean sea level. Said static ground water level of plaintiff's wells shall be ascertained by determining the average level of the water table within the area embraced within Sections 1, 2, 11 and 12, Township 3 North, Range 6 East, and Sections 6 and 7, Township 3 North, Range 7 East, M. D. B. and M., by measurements made during the first ten days of January of each year in wells situated within said area, care being taken to eliminate pumping in said wells for a sufficient period to allow the water therein to return to its static level. The average static ground water level so determined shall be deemed to be the static ground water level of plaintiff's wells.

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"Whenever the static ground water level of plaintiff's wells, as so measured, falls to or below sea level (determination of sea level to be made by U. S. G. S. data) and remains at or below sea level for a period of one year thereafter (determination of such fact to be made by similar measurements taken during the first ten days of the month of January of the year following the year in which the first determination is made), responsibility shall pass to the defendant for maintenance of plaintiff's priorities as defined in the final decree entered in this action in the following manner, to wit: If at any time following the two successive annual determinations above mentioned at which the static ground water level in plaintiff's wells has fallen to or below sea level, the plaintiff is unable to obtain through its wells owned or leased and existing at the time of the commencement of this action, or through other wells drilled in lieu thereof (all such wells shall be drilled and maintained to depths sufficient to yield the amount of plaintiff's prior water right but not to any depth exceeding 450 feet, and shall be equipped with efficient pumping equipment maintained in good operating condition) the full amount of its water priorities as established by decree herein, of a quality and potability comparable with that characterizing said water supply at the present time, the defendant will be prepared to supply and will supply plaintiff at its own expense with water in daily and annual amounts equal to the difference between the amount of plaintiff's said prior right and the amount of water so obtainable from plaintiff's said existing wells (or wells drilled in lieu thereof), such water so supplied to be of a quality and potability comparable with plaintiff's present supply; and defendant will continue to so supply plaintiff with such deficiency until the static ground water level of plaintiff's wells measured as aforesaid stands above sea level for a period of one year, after which such obligation shall cease unless and until said water level again falls to or below sea level, when it shall again arise.

"The obligation of the defendant under this stipulation shall not arise if said defendant shall establish to the satisfaction of the Court that any fall of the static water level in plaintiff's wells below said danger point of sea level is caused by operations of parties other than said defendant under rights which are junior in priority to those of said defendant, provided, however, that pumping water for its municipal water supply by the plaintiff herein from lands in the Mokelumne Basin lying outside of the following area, to wit: Sections 1, 2, 11 and 12, Township 3 North, Range 6 East, and Sections 6 and 7, Township 3 North, Range 7 East, M. D. B. and M., and those portions of Sections 35 and 36, Township 4 North, Range 6 East, and Section 31, Township 4 North, Range 7 East, M. D. B. and M., which lie south of the Mokelumne River, shall not be deemed to affect the level of the water table in plaintiff's wells located within the said area; nor shall water so pumped by plaintiff from lands outside of said area be counted as satisfying any part of plaintiff's prior water rights adjudicated in this action, but all water pumped or otherwise diverted by plaintiff within said described area (except water unfit for domestic use pumped by plaintiff from that certain well situate on the South bank of the Mokelumne River in Section 36, Township 4 North, Range 6 East, and now used for swimming pool purposes by plaintiff) shall be considered and included as being pumped and diverted by the exercise of such prior rights. Excuse of performance by said defendant of any of said obligations for the reasons above mentioned shall continue during such period, but no longer than such period, as the water table remains at or below sea level as the result of the causes entitling said defendant to such excuse from performance.

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"The trial court shall incorporate the provisions of this stipulation in its findings and decree herein.

"DATED: January 26th, 1958.

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Attorneys for Plaintiff  
CITY OF LODI.

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T. F. Wittschen

\_\_\_\_\_  
L. W. Irving

\_\_\_\_\_  
Harved Raines

\_\_\_\_\_  
Attorneys for Defendant  
EAST BAY MUNICIPAL UTILITY DISTRICT."

The foregoing Resolution No. 945 was then passed and adopted by the following vote:

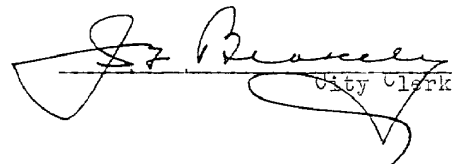
AYES: Councilmen, Weihe, Graffigna, Clark,  
Spooner and Steele

NOES: Councilmen, None

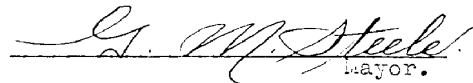
ABSENT: Councilmen, None

On motion of Councilman Weihe, the City Council then adjourned.

ATTEST:

  
\_\_\_\_\_  
City Clerk

The foregoing minutes of a special meeting of the City Council of the City of Lodi were read and approved without correction at a subsequent meeting of said City Council held February 7, 1958.

  
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Mayor.